

**FILED**

MAY 26 2017

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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CITY OF LOS ANGELES, a municipal corporation,</p> <p style="text-align: center;">Plaintiff-Appellant,</p> <p>v.</p> <p>BANK OF AMERICA CORPORATION; BANK OF AMERICA, N.A.; COUNTRYWIDE FINANCIAL CORPORATION; COUNTRYWIDE HOME LOANS INC; COUNTRYWIDE BANK, FSB,</p> <p style="text-align: center;">Defendants-Appellees.</p>
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No. 15-55897

D.C. No.  
2:13-cv-09046-PA-AGR

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Percy Anderson, District Judge, Presiding

Argued and Submitted May 17, 2017  
Seattle, Washington

Before: HAWKINS, GOULD, and PAEZ, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

The City of Los Angeles (“City”) appeals the district court’s summary judgment rulings in favor of the Bank of America, N.A. (“BOA”), and Countrywide Financial Corporation and Countrywide Home Loans, Inc. (collectively, “Countrywide”) on its claims that BOA and Countrywide violated the Fair Housing Act (“FHA”) and were unjustly enriched. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

We review de novo the district court’s grant of summary judgment. *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1083 (9th Cir. 2011). We must determine, viewing the evidence in the light most favorable to the City, whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 922 (9th Cir. 2004). Summary judgment may be affirmed on any ground supported by the record. *Video Software Dealers Ass’n v. Schwarzenegger*, 556 F.3d 950, 956 (9th Cir. 2009).

1. We may affirm for a reason supported by the record, but not relied upon by the district court.<sup>1</sup> The City sued under § 3605(a) of the FHA, which makes it

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<sup>1</sup> Defendants BOA and Countrywide separately moved for, and the district court separately granted, summary judgment. We affirm summary judgment for a reason which applies equally to both defendants and accordingly treat the defendants as one for the purposes of this disposition.

unlawful for financial institutions like BOA and Countrywide “to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race [or] color.” 42 U.S.C. § 3605(a). The City sued under both disparate impact and disparate treatment theories of discrimination, but focused on, and presented evidence almost exclusively to support, disparate impact.

To make out a prima facie case of disparate impact under the FHA, the City must show both a statistical disparity and a policy or policies that caused the disparity. *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2523 (2015). The causal link between the policy and disparity must be “robust.” *Id.* “A plaintiff who fails to . . . demonstrat[e] a causal connection cannot make out a prima facie case of disparate impact.” *Id.*

Through its expert Professor Ian Ayres, the City showed a statistical racial disparity. Minority borrowers were two to three times more likely to receive high cost or Fair Housing Act/Veteran’s Affairs (“FHA/VA”) loans than were similarly situated white borrowers. The City fell short, however, in failing to show a “robust” connection between this disparity and any BOA or Countrywide facially-neutral policy. *Id.* The city identified sixty-two facially neutral policies which it alleged resulted in the disparity, and emphasized three in particular. The City

emphasized that (1) BOA and Countrywide’s compensation scheme provided incentives for their loan officers to issue higher-amount loans, (2) BOA and Countrywide’s marketing targeted low-income borrowers, and (3) BOA and Countrywide failed to adequately monitor their loans for disparities. The City failed to demonstrate how the first two policies were causally connected in a “robust” way to the racial disparity, as they would affect borrowers equally regardless of race, and the third is not a policy at all. Summary judgment on the FHA claim was warranted because the record does not reflect that the City raised a genuine issue of material fact as to a policy or policies with a robust casual connection to the racial disparity.

3. We also affirm summary judgment on the City’s unjust enrichment claim. Under California law, unjust enrichment “may be awarded where the defendant obtained a benefit from the plaintiff by fraud, duress, conversion, or similar conduct.” *Durell v. Sharp Healthcare*, 108 Cal. Rptr. 3d 682, 699 (Ct. App. 2010). The City’s injuries—lost tax revenue and increased spending on services—did not confer a benefit upon BOA and Countrywide, and accordingly the City did not show a genuine issue of triable fact as to unjust enrichment.

4. Because we affirm on other grounds supported by the record, we need not address errors in the district court’s summary judgment, nor BOA and

Countrywide's alternative argument that we should affirm on the basis of the zone of interests test.

AFFIRMED.

## United States Court of Appeals for the Ninth Circuit

Office of the Clerk  
95 Seventh Street  
San Francisco, CA 94103

### Information Regarding Judgment and Post-Judgment Proceedings

#### Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

#### Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

#### Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

#### Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

#### (1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ▶ A material point of fact or law was overlooked in the decision;
  - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

#### B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-7806.

### **Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov)

### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
  - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.



United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:

http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf.

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

Form fields for case name, v., and 9th Cir. No.

The Clerk is requested to tax the following costs against:

Table with columns: Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1; REQUESTED (Each Column Must Be Completed); ALLOWED (To Be Completed by the Clerk). Rows include Excerpt of Record, Opening Brief, Answering Brief, Reply Brief, Other\*\*, and TOTAL.

\* Costs per page: May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

\*\* Other: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees cannot be requested on this form.

Continue to next page

**Form 10. Bill of Costs - Continued**

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

*(To Be Completed by the Clerk)*

Date

Costs are taxed in the amount of \$

Clerk of Court

By: , Deputy Clerk